

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5415

Chapter 120, Laws of 2023

68th Legislature
2023 Regular Session

PUBLIC DEFENSE SERVICES—NOT GUILTY BY REASON OF INSANITY

EFFECTIVE DATE: April 20, 2023

Passed by the Senate March 6, 2023
Yeas 49 Nays 0

DENNY HECK

President of the Senate

Passed by the House April 7, 2023
Yeas 96 Nays 1

LAURIE JINKINS

**Speaker of the House of
Representatives**

Approved April 20, 2023 10:23 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5415** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

April 21, 2023

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5415

Passed Legislature - 2023 Regular Session

State of Washington

68th Legislature

2023 Regular Session

By Senate Law & Justice (originally sponsored by Senators Trudeau, Pedersen, Dhingra, Saldaña, Valdez, and C. Wilson)

READ FIRST TIME 02/07/23.

1 AN ACT Relating to public defense services for persons committed
2 as not guilty by reason of insanity; amending RCW 2.70.020,
3 10.77.020, 10.77.140, 10.77.150, 10.77.165, 10.77.180, 10.77.190,
4 10.77.200, 10.77.205, and 10.77.250; reenacting and amending RCW
5 10.77.010; adding new sections to chapter 2.70 RCW; creating a new
6 section; and declaring an emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** Out of concern for inconsistent practices
9 for providing postcommitment right to counsel services, the
10 legislature directed the Washington state office of public defense to
11 develop a statewide proposal to administer the right to counsel for
12 persons acquitted by reason of insanity and committed to state
13 psychiatric care.

14 In response to the office's proposal, the legislature intends
15 that the office of public defense shall administer a program of
16 statewide public defense services to ensure the right to counsel for
17 indigent persons who are committed to state psychiatric care
18 following acquittal by reason of insanity. The legislature intends
19 that the office shall administer these postcommitment public defense
20 services in a manner that provides for statewide effectiveness,
21 efficiency, and equity.

1 **Sec. 2.** RCW 2.70.020 and 2021 c 328 s 3 are each amended to read
2 as follows:

3 The director shall:

4 (1) Administer all state-funded services in the following program
5 areas:

6 (a) Trial court criminal indigent defense, as provided in chapter
7 10.101 RCW;

8 (b) Appellate indigent defense, as provided in this chapter;

9 (c) Representation of indigent parents qualified for appointed
10 counsel in dependency and termination cases, as provided in RCW
11 13.34.090 and 13.34.092;

12 (d) Extraordinary criminal justice cost petitions, as provided in
13 RCW 43.330.190;

14 (e) Compilation of copies of DNA test requests by persons
15 convicted of felonies, as provided in RCW 10.73.170;

16 (f) Representation of indigent respondents qualified for
17 appointed counsel in sexually violent predator civil commitment
18 cases, as provided in chapter 71.09 RCW; and

19 (g) Representation of indigent persons who are acquitted by
20 reason of insanity and committed to state psychiatric care as
21 provided in chapter 10.77 RCW;

22 (2) Provide access to attorneys for juveniles contacted by a law
23 enforcement officer for whom a legal consultation is required under
24 RCW 13.40.740;

25 ~~((2))~~ (3) Submit a biennial budget for all costs related to the
26 office's program areas;

27 ~~((3))~~ (4) Establish administrative procedures, standards, and
28 guidelines for the office's program areas, including cost-efficient
29 systems that provide for authorized recovery of costs;

30 ~~((4))~~ (5) Provide oversight and technical assistance to ensure
31 the effective and efficient delivery of services in the office's
32 program areas;

33 ~~((5))~~ (6) Recommend criteria and standards for determining and
34 verifying indigency. In recommending criteria for determining
35 indigency, the director shall compile and review the indigency
36 standards used by other state agencies and shall periodically submit
37 the compilation and report to the legislature on the appropriateness
38 and consistency of such standards;

1 (~~(6)~~) (7) Collect information regarding indigent defense
2 services funded by the state and report annually to the advisory
3 committee, the legislature, and the supreme court;

4 (~~(7)~~) (8) Coordinate with the supreme court and the judges of
5 each division of the court of appeals to determine how appellate
6 attorney services should be provided.

7 The office of public defense shall not provide direct
8 representation of clients.

9 NEW SECTION. **Sec. 3.** A new section is added to chapter 2.70 RCW
10 to read as follows:

11 In providing postcommitment public defense services for indigent
12 persons who are committed to state psychiatric care following
13 acquittal by reason of insanity under chapter 10.77 RCW, the director
14 shall:

15 (1) In accordance with state contracting laws, contract with
16 persons admitted to practice law in this state and with government or
17 nongovernment organizations employing persons admitted to practice
18 law in this state;

19 (2) Establish annual contract fees for public defense legal
20 services within amounts appropriated;

21 (3) Ensure an indigent person qualified for public defense
22 counsel has contracted counsel appointed to assist him or her;

23 (4) Consistent with applicable statutes, court orders, and court
24 rules, establish office policies and procedures for the payment of
25 expert costs, other professional and investigative costs, and
26 litigation costs;

27 (5) Review and analyze existing caseload standards and make
28 recommendations for updating caseload standards as appropriate for
29 this area of legal practice; and

30 (6) Periodically, as needed, submit reports to the chief justice
31 of the supreme court of the state of Washington, the governor, and
32 the legislature. The purpose of such reports is to communicate new
33 information regarding public defense services for persons who are
34 committed following acquittal by reason of insanity under chapter
35 10.77 RCW and to recommend changes in statutes and court rules for
36 the improvement of insanity commitment and postcommitment
37 proceedings.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 2.70 RCW
2 to read as follows:

3 (1) All powers, duties, and functions of county government and
4 the department of social and health services pertaining to public
5 defense services for indigent persons who are committed following
6 acquittal by reason of insanity under chapter 10.77 RCW are
7 transferred to the office of public defense. County government and
8 the department of social and health services shall retain powers,
9 duties, and functions to ensure public defense services for indigent
10 persons prior to acquittal by reason of insanity under chapter 10.77
11 RCW.

12 (2)(a) The office of public defense may request copies of records
13 in the possession of a county public defense administrator, the
14 department of social and health services, or the behavioral health
15 administration pertaining to the powers, functions, and duties
16 transferred, which shall be timely delivered to the custody of the
17 office of public defense. In order to implement the office's
18 administration and oversight of postcommitment public defense
19 services authorized by this act, the office of public defense shall
20 be entitled to personal identifying information for any person
21 committed following acquittal by reason of insanity, as well as
22 information about underlying criminal or other pending court
23 proceedings, and the identity of any existing legal counsel. The
24 county public defense administrator, the department of social and
25 health services, or the behavioral health administration shall not
26 require the office of public defense to obtain consent by the person
27 committed following acquittal by reason of insanity in order to share
28 this information. The office of public defense shall maintain the
29 confidentiality of all confidential information included in the
30 records. Records may be transferred electronically or in hard copy,
31 as agreed by the agencies. When the office of public defense has
32 satisfied its business needs related to the transferred records, the
33 office shall destroy the records following appropriate procedures.

34 (b) All funds, credits, or other assets held by the department of
35 social and health services in connection with the powers, functions,
36 and duties transferred shall be assigned to the office of public
37 defense.

38 (c) Any appropriations made to the department of social and
39 health services for carrying out the powers, functions, and duties

1 transferred shall, on July 1, 2023, be transferred and credited to
2 the office of public defense.

3 (3) Notwithstanding July 1, 2023, if implementation of office of
4 public defense contracts would result in the substitution of counsel
5 within 180 days of a scheduled hearing, the director of the office of
6 public defense may continue defense services with existing counsel to
7 facilitate continuity of effective representation and avoid further
8 continuance of a trial. When existing counsel is maintained, payment
9 to complete the trial shall be prorated based on standard contract
10 fees established by the office of public defense under this act and,
11 at the director's discretion, may include extraordinary compensation
12 based on attorney documentation.

13 **Sec. 5.** RCW 10.77.010 and 2022 c 288 s 1 are each reenacted and
14 amended to read as follows:

15 As used in this chapter:

16 (1) "Admission" means acceptance based on medical necessity, of a
17 person as a patient.

18 (2) "Authority" means the Washington state health care authority.

19 (3) "Commitment" means the determination by a court that a person
20 should be detained for a period of either evaluation or treatment, or
21 both, in an inpatient or a less-restrictive setting.

22 (4) "Community behavioral health agency" has the same meaning as
23 "licensed or certified behavioral health agency" defined in RCW
24 71.24.025.

25 (5) "Conditional release" means modification of a court-ordered
26 commitment, which may be revoked upon violation of any of its terms.

27 (6) A "criminally insane" person means any person who has been
28 acquitted of a crime charged by reason of insanity, and thereupon
29 found to be a substantial danger to other persons or to present a
30 substantial likelihood of committing criminal acts jeopardizing
31 public safety or security unless kept under further control by the
32 court or other persons or institutions.

33 (7) "Department" means the state department of social and health
34 services.

35 (8) "Designated crisis responder" has the same meaning as
36 provided in RCW 71.05.020.

37 (9) "Detention" or "detain" means the lawful confinement of a
38 person, under the provisions of this chapter, pending evaluation.

1 (10) "Developmental disabilities professional" means a person who
2 has specialized training and three years of experience in directly
3 treating or working with persons with developmental disabilities and
4 is a psychiatrist or psychologist, or a social worker, and such other
5 developmental disabilities professionals as may be defined by rules
6 adopted by the secretary.

7 (11) "Developmental disability" means the condition as defined in
8 RCW 71A.10.020(~~(+5)~~).

9 (12) "Discharge" means the termination of hospital medical
10 authority. The commitment may remain in place, be terminated, or be
11 amended by court order.

12 (13) "Furlough" means an authorized leave of absence for a
13 resident of a state institution operated by the department designated
14 for the custody, care, and treatment of the criminally insane,
15 consistent with an order of conditional release from the court under
16 this chapter, without any requirement that the resident be
17 accompanied by, or be in the custody of, any law enforcement or
18 institutional staff, while on such unescorted leave.

19 (14) "Habilitative services" means those services provided by
20 program personnel to assist persons in acquiring and maintaining life
21 skills and in raising their levels of physical, mental, social, and
22 vocational functioning. Habilitative services include education,
23 training for employment, and therapy. The habilitative process shall
24 be undertaken with recognition of the risk to the public safety
25 presented by the person being assisted as manifested by prior charged
26 criminal conduct.

27 (15) "History of one or more violent acts" means violent acts
28 committed during: (a) The (~~ten-year~~) 10-year period of time prior
29 to the filing of criminal charges; plus (b) the amount of time equal
30 to time spent during the (~~ten-year~~) 10-year period in a mental
31 health facility or in confinement as a result of a criminal
32 conviction.

33 (16) "Immediate family member" means a spouse, child, stepchild,
34 parent, stepparent, grandparent, sibling, or domestic partner.

35 (17) "Incompetency" means a person lacks the capacity to
36 understand the nature of the proceedings against him or her or to
37 assist in his or her own defense as a result of mental disease or
38 defect.

39 (18) "Indigent" means any person who is indigent as defined in
40 RCW 10.101.010, or financially unable to obtain counsel or other

1 necessary expert or professional services without causing substantial
2 hardship to the person or his or her family.

3 (19) "Individualized service plan" means a plan prepared by a
4 developmental disabilities professional with other professionals as a
5 team, for an individual with developmental disabilities, which shall
6 state:

7 (a) The nature of the person's specific problems, prior charged
8 criminal behavior, and habilitation needs;

9 (b) The conditions and strategies necessary to achieve the
10 purposes of habilitation;

11 (c) The intermediate and long-range goals of the habilitation
12 program, with a projected timetable for the attainment;

13 (d) The rationale for using this plan of habilitation to achieve
14 those intermediate and long-range goals;

15 (e) The staff responsible for carrying out the plan;

16 (f) Where relevant in light of past criminal behavior and due
17 consideration for public safety, the criteria for proposed movement
18 to less-restrictive settings, criteria for proposed eventual release,
19 and a projected possible date for release; and

20 (g) The type of residence immediately anticipated for the person
21 and possible future types of residences.

22 (20) "Professional person" means:

23 (a) A psychiatrist licensed as a physician and surgeon in this
24 state who has, in addition, completed three years of graduate
25 training in psychiatry in a program approved by the American medical
26 association or the American osteopathic association and is certified
27 or eligible to be certified by the American board of psychiatry and
28 neurology or the American osteopathic board of neurology and
29 psychiatry;

30 (b) A psychologist licensed as a psychologist pursuant to chapter
31 18.83 RCW;

32 (c) A psychiatric advanced registered nurse practitioner, as
33 defined in RCW 71.05.020; or

34 (d) A social worker with a master's or further advanced degree
35 from a social work educational program accredited and approved as
36 provided in RCW 18.320.010.

37 (21) "Release" means legal termination of the court-ordered
38 commitment under the provisions of this chapter.

39 (22) "Secretary" means the secretary of the department of social
40 and health services or his or her designee.

1 (23) "Treatment" means any currently standardized medical or
2 mental health procedure including medication.

3 (24) "Treatment records" include registration and all other
4 records concerning persons who are receiving or who at any time have
5 received services for mental illness, which are maintained by the
6 department, by behavioral health administrative services
7 organizations and their staffs, by managed care organizations and
8 their staffs, and by treatment facilities. Treatment records do not
9 include notes or records maintained for personal use by a person
10 providing treatment services for the department, behavioral health
11 administrative services organizations, managed care organizations, or
12 a treatment facility if the notes or records are not available to
13 others.

14 (25) "Violent act" means behavior that: (a) (i) Resulted in; (ii)
15 if completed as intended would have resulted in; or (iii) was
16 threatened to be carried out by a person who had the intent and
17 opportunity to carry out the threat and would have resulted in,
18 homicide, nonfatal injuries, or substantial damage to property; or
19 (b) recklessly creates an immediate risk of serious physical injury
20 to another person. As used in this subsection, "nonfatal injuries"
21 means physical pain or injury, illness, or an impairment of physical
22 condition. "Nonfatal injuries" shall be construed to be consistent
23 with the definition of "bodily injury," as defined in RCW 9A.04.110.

24 **Sec. 6.** RCW 10.77.020 and 2006 c 109 s 1 are each amended to
25 read as follows:

26 (1) At any and all stages of the proceedings pursuant to this
27 chapter, any person subject to the provisions of this chapter shall
28 be entitled to the assistance of counsel, and if the person is
29 indigent the court shall appoint counsel to assist him or her. Prior
30 to acquittal by reason of insanity under this chapter, the court
31 shall appoint counsel administered by the county where the criminal
32 charges are filed.

33 At the time an indigent individual is acquitted by reason of
34 insanity and is committed to state psychiatric care, the court shall
35 immediately notify the Washington state office of public defense of
36 the need for representation during the term of commitment. The office
37 of public defense shall provide counsel to represent the person
38 throughout the term of commitment, including during any period of

1 conditional release, until legal termination of commitment and final
2 unconditional release, as provided in chapter 2.70 RCW.

3 (2) A person may waive his or her right to counsel; but such
4 waiver shall only be effective if a court makes a specific finding
5 that he or she is or was competent to so waive. In making such
6 findings, the court shall be guided but not limited by the following
7 standards: Whether the person attempting to waive the assistance of
8 counsel, does so understanding:

9 (a) The nature of the charges;

10 (b) The statutory offense included within them;

11 (c) The range of allowable punishments thereunder;

12 (d) Possible defenses to the charges and circumstances in
13 mitigation thereof; and

14 (e) All other facts essential to a broad understanding of the
15 whole matter.

16 ~~((+2))~~ (3) Whenever any person is subjected to an examination
17 pursuant to any provision of this chapter, he or she may retain an
18 expert or professional person to perform an examination in his or her
19 behalf. In the case of a person who is indigent, the court shall upon
20 his or her request assist the person in obtaining an expert or
21 professional person to perform an examination or participate in the
22 hearing on his or her behalf. An expert or professional person
23 obtained by an indigent person pursuant to the provisions of this
24 chapter shall be compensated for his or her services out of funds of
25 the department, in an amount determined by the secretary to be fair
26 and reasonable, except that an expert or professional person obtained
27 by a person who is committed following acquittal by reason of
28 insanity and committed to state psychiatric care shall be compensated
29 out of funds of the office of public defense as provided in policies
30 and procedures under chapter 2.70 RCW, in a manner consistent with
31 the rules of professional conduct and the standards for indigent
32 defense.

33 ~~((+3))~~ (4) Any time the defendant is being examined by court
34 appointed experts or professional persons pursuant to the provisions
35 of this chapter, the defendant shall be entitled to have his or her
36 attorney present.

37 ~~((+4))~~ (5) In a competency evaluation conducted under this
38 chapter, the defendant may refuse to answer any question if he or she
39 believes his or her answers may tend to incriminate him or her or
40 form links leading to evidence of an incriminating nature.

1 (~~(5)~~) (6) In a sanity evaluation conducted under this chapter,
2 if a defendant refuses to answer questions or to participate in an
3 examination conducted in response to the defendant's assertion of an
4 insanity defense, the court shall exclude from evidence at trial any
5 testimony or evidence from any expert or professional person obtained
6 or retained by the defendant.

7 **Sec. 7.** RCW 10.77.140 and 1998 c 297 s 40 are each amended to
8 read as follows:

9 (1) Each person committed to a hospital or other facility or
10 conditionally released pursuant to this chapter shall have a current
11 examination of his or her mental condition made by one or more
12 experts or professional persons at least once every six months. The
13 person may retain, or if the person is indigent and so requests, the
14 court (~~may appoint~~) shall assist the person in obtaining a
15 qualified expert or professional person to examine him or her, and
16 such expert or professional person shall have access to all hospital
17 records concerning the person. An expert or professional person
18 obtained by an indigent person who is committed to state psychiatric
19 care following acquittal by reason of insanity shall be compensated
20 out of funds of the office of public defense as provided in policies
21 and procedures under chapter 2.70 RCW, in a manner consistent with
22 the rules of professional conduct and the standards for indigent
23 defense.

24 (2) In the case of a committed or conditionally released person
25 who (~~is developmentally disabled~~) has a developmental disability,
26 the expert shall be a developmental disabilities professional. The
27 secretary, upon receipt of the periodic report, shall provide written
28 notice to the court of commitment of compliance with the requirements
29 of this section.

30 **Sec. 8.** RCW 10.77.150 and 2021 c 263 s 1 are each amended to
31 read as follows:

32 (1) Persons examined pursuant to RCW 10.77.140 may make
33 application to the secretary for conditional release. The secretary
34 shall, after considering the reports of experts or professional
35 persons conducting the examination pursuant to RCW 10.77.140, forward
36 to the court of the county which ordered the person's commitment the
37 person's application for conditional release as well as the
38 secretary's recommendations concerning the application and any

1 proposed terms and conditions upon which the secretary reasonably
2 believes the person can be conditionally released. Conditional
3 release may also contemplate partial release for work, training, or
4 educational purposes.

5 (2) In instances in which persons examined pursuant to RCW
6 10.77.140 have not made application to the secretary for conditional
7 release, but the secretary, after considering the reports of experts
8 or professional persons conducting the examination pursuant to RCW
9 10.77.140, reasonably believes the person may be conditionally
10 released, the secretary may submit a recommendation for release to
11 the court of the county that ordered the person's commitment. The
12 secretary's recommendation must include any proposed terms and
13 conditions upon which the secretary reasonably believes the person
14 may be conditionally released. Conditional release may also include
15 partial release for work, training, or educational purposes. Notice
16 of the secretary's recommendation under this subsection must be
17 provided to the person for whom the secretary has made the
18 recommendation for release and to his or her attorney.

19 (3) (a) The court of the county which ordered the person's
20 commitment, upon receipt of an application or recommendation for
21 conditional release with the secretary's recommendation for
22 conditional release terms and conditions, shall within (~~thirty~~) 30
23 days schedule a hearing. The court may schedule a hearing on
24 applications recommended for disapproval by the secretary.

25 (b) The prosecuting attorney shall represent the state at such
26 hearings and shall have the right to have the person examined by an
27 expert or professional person of the prosecuting attorney's choice.
28 If the committed person is indigent, and he or she so requests, the
29 court shall (~~appoint~~) assist the person in obtaining a qualified
30 expert or professional person to examine the person on his or her
31 behalf. An expert or professional person obtained by an indigent
32 person who is committed to state psychiatric care following acquittal
33 by reason of insanity shall be compensated out of funds of the office
34 of public defense as provided in policies and procedures under
35 chapter 2.70 RCW, in a manner consistent with the rules of
36 professional conduct and the standards for indigent defense.

37 (c) The issue to be determined at such a hearing is whether or
38 not the person may be released conditionally to less restrictive
39 alternative treatment under the supervision of a multidisciplinary
40 transition team under conditions imposed by the court, including

1 access to services under RCW 10.77.175 without substantial danger to
2 other persons, or substantial likelihood of committing criminal acts
3 jeopardizing public safety or security.

4 (d) In cases that come before the court under subsection (1) or
5 (2) of this section, the court may deny conditional release to a less
6 restrictive alternative only on the basis of substantial evidence.
7 The court may modify the suggested terms and conditions on which the
8 person is to be conditionally released. Pursuant to the determination
9 of the court after hearing, the committed person shall thereupon be
10 released on such conditions as the court determines to be necessary,
11 or shall be remitted to the custody of the secretary.

12 (4) If the order of conditional release provides for the
13 conditional release of the person to a less restrictive alternative,
14 including residential treatment or treatment in the community, the
15 conditional release order must also include:

16 (a) A requirement for the committed person to be supervised by a
17 multidisciplinary transition team, including a specially trained
18 community corrections officer, a representative of the department of
19 social and health services, and a representative of the community
20 behavioral health agency providing treatment to the person under RCW
21 10.77.175.

22 (i) The court may omit appointment of the representative of the
23 community behavioral health agency if the conditional release order
24 does not require participation in behavioral health treatment;

25 (ii) The court may omit the appointment of a community
26 corrections officer if it makes a special finding that the
27 appointment of a community corrections officer would not facilitate
28 the success of the person, or the safety of the person and the
29 community;

30 (b) A requirement for the person to comply with conditions of
31 supervision established by the court which shall include at a minimum
32 reporting as directed to a designated member of the transition team,
33 remaining within prescribed geographical boundaries, and notifying
34 the transition team prior to making any change in the person's
35 address or employment. If the person is not in compliance with the
36 court-ordered conditions of release, the community corrections
37 officer or another designated transition team member shall notify the
38 secretary or the secretary's designee; and

39 (c) If the court requires participation in behavioral health
40 treatment, the name of the licensed or certified behavioral health

1 agency responsible for identifying the services the person will
2 receive under RCW 10.77.175, and a requirement that the person
3 cooperate with the services planned by the licensed or certified
4 behavioral health agency. The licensed or certified behavioral health
5 agency must comply with the reporting requirements of RCW 10.77.160,
6 and must immediately report to the court, prosecutor, and defense
7 counsel any substantial withdrawal or disengagement from medication
8 or treatment, or any change in the person's mental health condition
9 that renders him or her a potential risk to the public.

10 (5) The role of the transition team appointed under subsection
11 (4) of this section shall be to facilitate the success of the person
12 on the conditional release order by monitoring the person's progress
13 in treatment, compliance with court-ordered conditions, and to
14 problem solve around extra support the person may need or
15 circumstances that may arise that threaten the safety of the person
16 or the community. The transition team may develop a monitoring plan
17 that may be carried out by any member of the team. The transition
18 team shall meet according to a schedule developed by the team, and
19 shall communicate as needed if issues arise that require the
20 immediate attention of the team.

21 (6) The department of corrections shall collaborate with the
22 department to develop specialized training for community corrections
23 officers under this section. The lack of a trained community
24 corrections officer must not be the cause of delay to entry of a
25 conditional release order. Another community corrections officer may
26 be appointed if no specially trained officer is available.

27 (7) Any person, whose application for conditional release has
28 been denied, may reapply after a period of six months from the date
29 of denial, or sooner with the support of the department.

30 (8) A person examined under RCW 10.77.140 or the department may
31 make a motion for limited conditional release under this section, on
32 the grounds that there is insufficient evidence that the person may
33 be released conditionally to less restrictive alternative treatment
34 under subsection (3)(c) of this section, but the person would benefit
35 from the opportunity to exercise increased privileges while remaining
36 under the custody and supervision of the department and with the
37 supervision of the department these increased privileges can be
38 exercised without substantial danger to other persons or substantial
39 likelihood of committing criminal acts jeopardizing public safety or
40 security. The department may respond to a person's application for

1 conditional release by instead supporting limited conditional
2 release.

3 **Sec. 9.** RCW 10.77.165 and 2011 c 305 s 6 are each amended to
4 read as follows:

5 (1) In the event of an escape by a person committed under this
6 chapter from a state facility or the disappearance of such a person
7 on conditional release or other authorized absence, the
8 superintendent shall provide notification of the person's escape or
9 disappearance for the public's safety or to assist in the
10 apprehension of the person.

11 (a) The superintendent shall notify:

12 (i) State and local law enforcement officers located in the city
13 and county where the person escaped and in the city and county which
14 had jurisdiction of the person on the date of the applicable offense;

15 (ii) Other appropriate governmental agencies; (~~and~~)

16 (iii) The person's attorney of record; and

17 (iv) The person's relatives.

18 (b) The superintendent shall provide the same notification as
19 required by (a) of this subsection to the following, if such notice
20 has been requested in writing about a specific person committed under
21 this chapter:

22 (i) The victim of the crime for which the person was convicted or
23 the victim's next of kin if the crime was a homicide;

24 (ii) Any witnesses who testified against the person in any court
25 proceedings if the person was charged with a violent offense; and

26 (iii) Any other appropriate persons.

27 (2) Information regarding victims, next of kin, or witnesses
28 requesting the notice, information regarding any other person
29 specified in writing by the prosecuting attorney to receive the
30 notice, and the notice are confidential and shall not be available to
31 the person committed under this chapter.

32 (3) The notice provisions of this section are in addition to
33 those provided in RCW 10.77.205.

34 **Sec. 10.** RCW 10.77.180 and 1998 c 297 s 42 are each amended to
35 read as follows:

36 Each person conditionally released pursuant to RCW 10.77.150
37 shall have his or her case reviewed by the court which conditionally
38 released him or her no later than one year after such release and no

1 later than every two years thereafter, such time to be scheduled by
2 the court. Review may occur in a shorter time or more frequently, if
3 the court, in its discretion, on its own motion, or on motion of the
4 person, the secretary of social and health services, the secretary of
5 corrections, medical or mental health practitioner, or the
6 prosecuting attorney, so determines. The sole question to be
7 determined by the court is whether the person shall continue to be
8 conditionally released. The court in making its determination shall
9 be aided by the periodic reports filed pursuant to RCW 10.77.140 and
10 10.77.160, and the opinions of the secretary and other experts or
11 professional persons. If the conditionally released person is
12 indigent, and so requests, the court shall assist the person in
13 obtaining a qualified expert or professional person to examine the
14 person on his or her behalf. An expert or professional person
15 obtained by a conditionally released indigent person who was
16 committed to state psychiatric care following acquittal by reason of
17 insanity shall be compensated out of funds of the office of public
18 defense as provided in policies and procedures under chapter 2.70
19 RCW, in a manner consistent with the rules of professional conduct
20 and the standards for indigent defense.

21 **Sec. 11.** RCW 10.77.190 and 2010 c 263 s 7 are each amended to
22 read as follows:

23 (1) Any person submitting reports pursuant to RCW 10.77.160, the
24 secretary, or the prosecuting attorney may petition the court to, or
25 the court on its own motion may schedule an immediate hearing for the
26 purpose of modifying the terms of conditional release if the
27 petitioner or the court believes the released person is failing to
28 adhere to the terms and conditions of his or her conditional release
29 or is in need of additional care and treatment.

30 (2) If the prosecuting attorney, the secretary of social and
31 health services, the secretary of corrections, or the court, after
32 examining the report filed with them pursuant to RCW 10.77.160, or
33 based on other information received by them, reasonably believes that
34 a conditionally released person is failing to adhere to the terms and
35 conditions of his or her conditional release the court or secretary
36 of social and health services or the secretary of corrections may
37 order that the conditionally released person be apprehended and taken
38 into custody. The court and the person's attorney of record shall be
39 notified of the apprehension before the close of the next judicial

1 day. The court shall schedule a hearing within (~~thirty~~) 30 days to
2 determine whether or not the person's conditional release should be
3 modified or revoked. Both the prosecuting attorney and the
4 conditionally released person shall have the right to request an
5 immediate mental examination of the conditionally released person. If
6 the conditionally released person is indigent, and so requests, the
7 court (~~or secretary of social and health services or the secretary~~
8 ~~of corrections or their designees shall, upon request, assist him or~~
9 ~~her in obtaining a qualified expert or professional person to conduct~~
10 ~~the examination~~) shall assist the person in obtaining a qualified
11 expert or professional person to examine the person on his or her own
12 behalf. An expert or professional person obtained by a conditionally
13 released indigent person who was committed into state psychiatric
14 care following acquittal by reason of insanity shall be compensated
15 out of funds of the office of public defense as provided in policies
16 and procedures under chapter 2.70 RCW, in a manner consistent with
17 the rules of professional conduct and the standards for indigent
18 defense.

19 (3) If the hospital or facility designated to provide outpatient
20 care determines that a conditionally released person presents a
21 threat to public safety, the hospital or facility shall immediately
22 notify the secretary of social and health services or the secretary
23 of corrections or their designees. The secretary shall order that the
24 conditionally released person be apprehended and taken into custody.

25 (4) The court, upon receiving notification of the apprehension,
26 shall promptly schedule a hearing. The issue to be determined is
27 whether the conditionally released person did or did not adhere to
28 the terms and conditions of his or her release, or whether the person
29 presents a threat to public safety. Pursuant to the determination of
30 the court upon such hearing, the conditionally released person shall
31 either continue to be conditionally released on the same or modified
32 conditions or his or her conditional release shall be revoked and he
33 or she shall be committed subject to release only in accordance with
34 provisions of this chapter.

35 **Sec. 12.** RCW 10.77.200 and 2013 c 289 s 7 are each amended to
36 read as follows:

37 (1) Upon application by the committed or conditionally released
38 person, the secretary shall determine whether or not reasonable
39 grounds exist for release. In making this determination, the

1 secretary may consider the reports filed under RCW 10.77.060,
2 10.77.110, 10.77.140, and 10.77.160, and other reports and
3 evaluations provided by professionals familiar with the case. If the
4 secretary approves the release he or she then shall authorize the
5 person to petition the court.

6 (2) In instances in which persons have not made application for
7 release, but the secretary believes, after consideration of the
8 reports filed under RCW 10.77.060, 10.77.110, 10.77.140, and
9 10.77.160, and other reports and evaluations provided by
10 professionals familiar with the case, that reasonable grounds exist
11 for release, the secretary may petition the court. If the secretary
12 petitions the court for release under this subsection, notice of the
13 petition must be provided to the person who is the subject of the
14 petition and to his or her attorney.

15 (3) The petition shall be served upon the court and the
16 prosecuting attorney. The court, upon receipt of the petition for
17 release, shall within ~~((forty-five))~~ 45 days order a hearing.
18 Continuance of the hearing date shall only be allowed for good cause
19 shown. The prosecuting attorney shall represent the state, and shall
20 have the right to have the person who is the subject of the petition
21 examined by an expert or professional person of the prosecuting
22 attorney's choice. If the secretary is the petitioner, the attorney
23 general shall represent the secretary. If the person who is the
24 subject of the petition is indigent, and the person so requests, the
25 court shall ~~((appoint))~~ assist the person in obtaining a qualified
26 expert or professional person to examine him or her. An expert or
27 professional person obtained by an indigent person who was committed
28 to state psychiatric care following acquittal by reason of insanity
29 shall be compensated out of funds of the office of public defense as
30 provided in policies and procedures under chapter 2.70 RCW, in a
31 manner consistent with the rules of professional conduct and the
32 standards for indigent defense. If the person who is the subject of
33 the petition has a developmental disability, the examination shall be
34 performed by a developmental disabilities professional. The hearing
35 shall be before a jury if demanded by either the petitioner or the
36 prosecuting attorney. The burden of proof shall be upon the
37 petitioner to show by a preponderance of the evidence that the person
38 who is the subject of the petition no longer presents, as a result of
39 a mental disease or defect, a substantial danger to other persons, or
40 a substantial likelihood of committing criminal acts jeopardizing

1 public safety or security, unless kept under further control by the
2 court or other persons or institutions. If the person who is the
3 subject of the petition will be transferred to a state correctional
4 institution or facility upon release to serve a sentence for any
5 class A felony, the petitioner must show that the person's mental
6 disease or defect is manageable within a state correctional
7 institution or facility, but must not be required to prove that the
8 person does not present either a substantial danger to other persons,
9 or a substantial likelihood of committing criminal acts jeopardizing
10 public safety or security, if released.

11 (4) For purposes of this section, a person affected by a mental
12 disease or defect in a state of remission is considered to have a
13 mental disease or defect requiring supervision when the disease may,
14 with reasonable medical probability, occasionally become active and,
15 when active, render the person a danger to others. Upon a finding
16 that the person who is the subject of the petition has a mental
17 disease or defect in a state of remission under this subsection, the
18 court may deny release, or place or continue such a person on
19 conditional release.

20 (5) Nothing contained in this chapter shall prohibit the patient
21 from petitioning the court for release or conditional release from
22 the institution in which he or she is committed. The petition shall
23 be served upon the court, the prosecuting attorney, and the
24 secretary. Upon receipt of such petition, the secretary shall develop
25 a recommendation as provided in subsection (1) of this section and
26 provide the secretary's recommendation to all parties and the court.
27 The issue to be determined on such proceeding is whether the patient,
28 as a result of a mental disease or defect, is a substantial danger to
29 other persons, or presents a substantial likelihood of committing
30 criminal acts jeopardizing public safety or security, unless kept
31 under further control by the court or other persons or institutions.

32 (6) Nothing contained in this chapter shall prohibit the
33 committed person from petitioning for release by writ of habeas
34 corpus.

35 **Sec. 13.** RCW 10.77.205 and 2009 c 521 s 27 are each amended to
36 read as follows:

37 (1)(a) At the earliest possible date, and in no event later than
38 (~~thirty~~) 30 days before conditional release, release, authorized
39 furlough pursuant to RCW 10.77.163, or transfer to a less-restrictive

1 facility than a state mental hospital, the superintendent shall send
2 written notice of the conditional release, release, authorized
3 furlough, or transfer of a person who has been found not guilty of a
4 sex, violent, or felony harassment offense by reason of insanity and
5 who is now in the custody of the department pursuant to this chapter,
6 to the following:

7 (i) The chief of police of the city, if any, in which the person
8 will reside; and

9 (ii) The sheriff of the county in which the person will reside.

10 (b) The same notice as required by (a) of this subsection shall
11 be sent to the following, if such notice has been requested in
12 writing about a specific person committed under this chapter:

13 (i) The victim of the crime for which the person was committed or
14 the victim's next of kin if the crime was a homicide;

15 (ii) Any witnesses who testified against the person in any court
16 proceedings; and

17 (iii) Any person specified in writing by the prosecuting
18 attorney.

19 Information regarding victims, next of kin, or witnesses requesting
20 the notice, information regarding any other person specified in
21 writing by the prosecuting attorney to receive the notice, and the
22 notice are confidential and shall not be available to the person
23 committed under this chapter.

24 (c) In addition to the notice requirements of (a) and (b) of this
25 subsection, the superintendent shall comply with RCW 10.77.163.

26 (d) The (~~thirty-day~~) 30-day notice requirement contained in (a)
27 and (b) of this subsection shall not apply to emergency medical
28 furloughs.

29 (e) The existence of the notice requirements in (a) and (b) of
30 this subsection shall not require any extension of the release date
31 in the event the release plan changes after notification.

32 (2) If a person who has been found not guilty of a sex, violent,
33 or felony harassment offense by reason of insanity and who is
34 committed under this chapter escapes, the superintendent shall
35 immediately notify, by the most reasonable and expedient means
36 available, the chief of police of the city and the sheriff of the
37 county in which the person resided immediately before the person's
38 arrest, and the person's attorney of record. If previously requested,
39 the superintendent shall also notify the witnesses and the victim, if
40 any, of the crime for which the person was committed or the victim's

1 next of kin if the crime was a homicide. The superintendent shall
2 also notify appropriate persons pursuant to RCW 10.77.165. If the
3 person is recaptured, the secretary shall send notice to the persons
4 designated in this subsection as soon as possible but in no event
5 later than two working days after the department learns of such
6 recapture.

7 (3) If the victim, the victim's next of kin, or any witness is
8 under the age of (~~sixteen~~) 16, the notice required by this section
9 shall be sent to the parents or legal guardian of the child.

10 (4) The department shall send the notices required by this
11 chapter to the last address provided to the department by the
12 requesting party. The requesting party shall furnish the department
13 with a current address.

14 (5) For purposes of this section the following terms have the
15 following meanings:

16 (a) "Violent offense" means a violent offense under RCW
17 9.94A.030;

18 (b) "Sex offense" means a sex offense under RCW 9.94A.030;

19 (c) "Next of kin" means a person's spouse, state registered
20 domestic partner, parents, siblings, and children;

21 (d) "Authorized furlough" means a furlough granted after
22 compliance with RCW 10.77.163;

23 (e) "Felony harassment offense" means a crime of harassment as
24 defined in RCW 9A.46.060 that is a felony.

25 **Sec. 14.** RCW 10.77.250 and 2022 c 288 s 6 are each amended to
26 read as follows:

27 (1) Within amounts appropriated, the department shall be
28 responsible for all costs relating to the evaluation and inpatient
29 treatment of persons committed to it pursuant to any provisions of
30 this chapter, and the logistical and supportive services pertaining
31 thereto except as otherwise provided by law. Reimbursement may be
32 obtained by the department pursuant to RCW 43.20B.330.

33 (2) Within amounts appropriated, the authority shall be
34 responsible for all costs relating to outpatient competency
35 restoration programs.

36 (3) The office of public defense shall be responsible for costs
37 of public defense services, including defense expert and professional
38 services, for indigent persons acquitted by reason of insanity
39 throughout the term of their commitment to state psychiatric care,

1 including during any period of conditional release, until legal
2 termination of commitment and final unconditional release.

3 NEW SECTION. **Sec. 15.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of
5 the state government and its existing public institutions, and takes
6 effect immediately.

Passed by the Senate March 6, 2023.

Passed by the House April 7, 2023.

Approved by the Governor April 20, 2023.

Filed in Office of Secretary of State April 21, 2023.

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